

ADDENDUM TO CHAPTER SIX

APA ADVERSARIAL PROCEEDINGS

This addendum is intended only to address revisions to the Administrative Process Act passed through HB 462 and SB 207 during the 2016 session of the General Assembly, which are effective July 1, 2016. Please note that this addendum is not a comprehensive revision to Chapter 6 of the Civil Enforcement Manual, which is comprised of guidance on Adversarial Administrative Actions drafted in 1999 and guidance on Formal Hearings drafted in 2007. When the Enforcement Division completes other necessary updates and revisions to Chapter 6, this addendum will be incorporated into the revised chapter.

I. Contents of Notice Letters

Notice letters for informal fact finding proceedings under Va. Code § 2.2-2019 and formal hearings under Va. Code § 2.2-4020 must include the name, phone number, and DEQ email address for the DEQ staff person designated to answer questions or otherwise assist a named party.

II. Reconsideration of Formal Hearings

When the DEQ or a citizen's board issues a final decision after a formal hearing, a party may file a petition for reconsideration within 15 days from service of the decision. The petition must include a full and clear statement of pertinent facts, grounds for reconsideration, and a statement of relief. The petition does not suspend the execution of the decision or toll the time for filing an appeal, unless the agency grants the petition and provides for suspension of the decision.

In considering a petition for reconsideration, DEQ may consider:

- 1) Evidence in the administrative record;
- 2) New material evidence that was not in existence before the administrative record closed;
- 3) Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced before the administrative record closed.

DEQ must issue a written decision on a petition for reconsideration of a DEQ decision within 30 days of receipt. A citizens' board may consider a petition for reconsideration of the board's decision at the next regularly scheduled board meeting; schedule a special meeting to decide upon the petition within 30 days of receipt; or delegate to the DEQ director, the board chairman, or a board subcommittee the authority to issue a decision within 30 days of receipt by the board.

The agency must state the reasons for its decision on a petition for reconsideration, and the written decision must:

- 1) Deny the petition,¹
- 2) Modify the case decision, or
- 3) Vacate the case decision and set a new hearing for further proceedings.

DEQ may modify the case decision or vacate the case decision and set a new hearing for further proceedings on the basis of:

- 1) Error on the face of the decision;
- 2) Clear error of fact;
- 3) New material evidence that was not in existence before the administrative record closed; or newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced before the administrative record closed;
- 4) Issuance of a decision contrary to law; or
- 5) Failure to conduct the hearing in accordance with Va. Code § 2.2-4020

In addition to responding to petitions for reconsideration, DEQ or a citizens' board may also act on its own initiative to reconsider final decisions within 30 days of issuance. If DEQ staff identifies an error of the type listed above in a decision issued by DEQ or a citizens' board following a formal hearing, they should notify the Director of Enforcement, Enforcement Adjudication Manager, and signatory of the decision to discuss whether reconsideration is warranted.

¹ Denial of a petition for reconsideration is not a separate case decision and is not subject to judicial review on its own merits.